



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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August 14th, 2002

Minutes of the August 14th, 2002, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission's Meeting Room, PUC Building, 242 State Street, Augusta, Maine.

Present: Chair: Alan Harding, Esq., Hon. Andrew Ketterer, Esq., and Hon. David Ott, Esq.,
Members; Director William C. Hain, III, Esq.; Counsel Phyllis Gardiner, Esq.; and
Lobbyist Registrar Diana True

Absent: Hon James Donnelly.

At 10:08 a.m., Chair Harding convened the meeting, announcing consideration of items on the published agenda as follows:

Agenda Item #10: Political Party Committee "Subaccounts"

A "party committee" (i.e., the state, district and county committees of political parties) under 21A M.R.S.A. §1013-A(3) is excluded from the definition of "political action committee" by 21A M.R.S.A. 1052(5)(B)(3). In 1998 the Commission determined that an "affiliate" of a state party committee (with a separate bank account and controlled by the same party officials) is not a separate reporting entity. In 2001 the Commission concluded that a subaccount (i.e., an "affiliate" account) of a party committee is not required to register and file reports as a political action committee. Members of the public have inquired about the connection between a subaccount (affiliate) organization (e.g., "Maine Victory 2002") that has not registered in any way with the Commission and a party committee organization (e.g., the Maine Democratic Party) and how the public is to know about the affiliation of a subordinate organization with its principal party committee.

Mr. Hain inquired whether "Maine Victory 2002" a subaccount or affiliate of the Maine State Democratic Committee or a joint fundraising committee established by U.S. Senate candidate Chellie Pingree and the Maine Democratic Party, as suggested by a July 18, 2002 "Roll Call" magazine article. If it is a subaccount (affiliate), he further requested the Commission to determine what the party committee's reporting requirements regarding contributions to and expenditures by the subaccount (affiliate) organization should be, as distinguished from that of the party committee. Finally, he requested the Commission to determine, if "Maine Victory 2002" is a joint fundraising committee, what (if any) registration and reporting requirements should apply to the subordinate (affiliate) organization.

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Ms. Gwethalyn Phillips, Chairperson of the Maine Democratic Party, addressed the Commission. She explained the “joint fundraising” provisions under federal law and the Federal Elections Commission’s regulations. She explained that the party committee maintains several separate accounts that perform various functions, that no joint fundraising agreement exists with the Pingree campaign committee, and that the cited article is in error on that point. Chair Harding requested to know whether Ms. Phillips would object to providing the Commission with the names of subaccounts that may exist under the Democratic Party Committee. Ms. Phillips responded that she would do so provided the other state party committees also provided that information.

Mr. Hain suggested that the state party committee directors may furnish the requested information provided all state party committees were asked for the same information. The Commission concluded that Mr. Hain should send a letter to the three state party committees requesting that they provide the name of each subordinate or affiliated entity under which the Committees may transact campaign-related activities, including receiving contributions and making expenditures that are reported on campaign finance reports as required by State law. The requested information is for the limited purpose of enabling the Commission staff to provide information in response to public inquiries that may refer to the name of a subordinate entity rather than the principal name of the state party committee.

Agenda Item #9: Maine Citizens for Clean Elections Request

Mr. Douglas R. Clopp of the Maine Citizens for Clean Elections (MCCE) addressed Members regarding his organization’s concerns about the future solvency of the Maine Clean Election Fund. The 120th Legislature enacted legislation to transfer \$4 million from the Maine Clean Election Fund to the State Rainy Day Fund on June 30th, 2003. An anticipated proposal by the Governor would withdraw an additional \$2.5 million. Mr. Clopp and Mr. Thomas Bradley presented a “Summary of Clean Election Fund Forecasts” on behalf of the Maine Citizens for Clean Elections. The summary included three (3) forecasts based upon varying assumptions that were included in the presentation.

Commission dialogue with the MCCE representatives focused on the assumptions regarding projected participation in future gubernatorial elections as the basis for the major disparity between the groups’s projected funding forecasts and governmental forecasts. Chair Harding questioned the historical basis for the assumptions regarding gubernatorial candidate participation. A discussion ensued regarding the correlation between the funding levels for gubernatorial candidates and the likelihood of participation by future gubernatorial candidates. Discussion participants agreed that this year’s funding level for gubernatorial candidates is low and that funding levels in the future are likely to significantly affect the amount of participation by prospective gubernatorial candidates. Chair Harding suggested that the degree of success of the current Maine Clean Election Act gubernatorial candidate, Green Independent Jonathan Carter, also would impact the likelihood of participation by future gubernatorial candidates.

Based upon that, Chair Harding suggested that it would be premature to make any assumptions of future gubernatorial candidate participation until the issue of the funding level for those



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candidates is addressed. Based upon the funding formula prescribed by the Maine Clean Election Act, those funding levels are not likely to significantly increase without legislative intervention. Therefore, Chair Harding suggested that the issue of the appropriate funding level for future gubernatorial candidates should be resolved by the Legislature and then the sufficiency of funds to meet anticipated disbursements could be addressed. He also suggested that more clarity would exist after the November general election regarding future participation. The probability that the 121st Legislature will be comprised of a majority of publicly funded Legislators is also likely to affect the resolution of this issue.

Mr. Hain reminded Members of the recent change to 21-A M.R.S.A. §1124(3) that requires the Commission to publish an estimate of revenue in the Maine Clean Election Fund available for the coming year's election and an estimate of the likely demand for funding by September 1st preceding each election year. The 120th Legislature explicitly authorized the Commission to submit legislation to request additional funding in the event of a projected shortage. An additional provision in 21-A M.R.S.A. §1125(13) authorizes the Commission to permit certified candidates to accept and spend contributions within statutory contribution limits up to the applicable amounts they would have received from the Maine Clean Election Fund if the Commission determines that Fund revenues are insufficient to meet distribution requirements.

Mr. Ketterer suggested that the issue is part of the political process to the extent that the Legislature has already addressed the transfer of \$4 million and will address any future transfers through the legislative process. An attempt to prevent such transfers will require sufficient political support to prevent that action. The case for preventing additional transfers should be made through the political process.

Members agreed no action should be taken at this time and thanked Mr. Clopp and Mr. Bradley for their presentation.

Agenda Item #1: Ratification of Minutes

Mr. Ketterer moved, Mr. Ott seconded, and Members voted unanimously to ratify and adopt the minutes of the July 10th, 2002 meeting as printed.

Agenda Item #2: Complaint Alleging Violation of Attribution Requirements; Timothy Richardson

By letter received May 13th, 2002, Representative Patricia A. Blanchette, and by letter dated May 28th, 2002, Ms. M. Lorraine Stanley, President, Committee to Elect Stephen S. Stanley, each alleged violations by Mr. Richardson of the requirements of 21A M.R.S.A. §1014 regarding the publication and distribution of political statements. The Commission had tabled consideration of this matter at its previous meeting pending Mr. Richardson's response to when he had affixed the stamp he cited in his letter of June 8th, 2002, onto his political campaign signs. Mr. Richardson responded to that inquiry by informing the Commission that he had corrected all of his signs by May 15th, 2002, although the stamp had apparently washed off one of the personally made, wooden signs. After brief discussion, Mr. Ketterer moved, Mr. Ott seconded, and Members



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voted 2-1 (Chair Harding opposed) to find no violation, recognizing that each alleged violation had been reported more than 10 days before the primary election and each had been corrected within 10 days after Mr. Richardson received notification. Chair Harding stated that he would find a violation but would not assess a penalty.

Agenda Item #3A: Late Candidate Campaign Finance Reports; Mark A. Sanborn

Mr. Sanborn's 42-Day Post General CFR for 2000 was due on 12/19/00 and filed on 7/1/02, 557 days late. It was his first late report violation this biennium. After brief discussion, Mr. Ketterer moved, Mr. Ott seconded, and Members voted unanimously to assess a \$3,375.42 penalty and to refer the matter to the Attorney General for judicial collection if the penalty is not paid or Mr. Sanborn does not execute an acceptable payment schedule within 30 days of notification.

Agenda Item #3C: Late Candidate Campaign Finance Reports; Hon. Kenneth Lemont

Senator Lemont's 6-Day Pre-Primary Report was due 6/5/02 and filed 6/6/02, 1 day late. It was his first late report violation this biennium. After brief discussion, Mr. Ketterer moved, Chair Harding seconded, and Members voted unanimously to assess a \$12.56 penalty.

Agenda Item #4: Referrals to Attorney General for Collection: Duane J. Belanger

The Commission had previously assessed penalties for the following late campaign finance reports: 6-Day Pre-General and 42-Day Post-General (1998); 42-Day Post-Primary, 6-Day Pre-General, and 42-Day Post-General (2000). Outstanding penalties totaling \$21,267.75 [\$5,000 each except \$1,267.75 for 42-Day Post-Primary (2000)], plus \$78.75 (unpaid previously assessed from 1998 election) have not been paid. After brief discussion, Mr. Ketterer moved, Mr. Ott seconded and Members voted unanimously to refer collection of the full outstanding penalty amount of \$21,346.50 to the Attorney General for judicial collection.

**Agenda Item #5: Late Lobbyist Monthly Disclosure Report; Joseph P. Rowan Jr.,
Lobbyist for Johnson & Johnson**

Mr. Rowan's April Report was due 5/15/02 and filed 5/28/02, 13 days late. He had no previous late filings this biennium. After brief discussion, Mr. Ketterer moved, Mr. Ott seconded, and Members voted unanimously to assess a \$50 in consideration of Mr. Rowan's letter dated July 18th, 2002.

Agenda Item #6: Joyce M. Packard Request for Authority to Accept Gift

Maine Clean Election Act (MCEA) candidate Joyce Packard requested permission to accept as a "gift" 1000, 3-inch diameter stickers (\$80 value) that she had received in error without her prior approval. Her letter dated July 23rd, 2001 explains the circumstances. Her status as a MCEA candidate prohibits her from accepting any contributions, including in-kind contributions. After brief discussion, Mr. Ott moved, Chair Harding seconded, and Members voted unanimously to



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authorize Ms. Packard to use the stickers because the shipment had been an error and there was no intent by the manufacturer to contribute to Mr. Packard.

Agenda Item #7: Virginia Diesinger Request for MCEA Eligibility

Virginia Sturies was successfully nominated as a nonparticipating candidate in the June Primary Election. She thereafter withdrew and has been nominated as her party's replacement candidate in the November General Election under her now married name of Virginia Diesinger. She requested authorization to become a Maine Clean Election Act candidate if she is otherwise able to qualify. At its July meeting, the Commission decided that candidates who are nominated to replace themselves would not thereafter be eligible for MCEA participation. Ms. Diesinger (Sturies) cited her unique situation as the basis for a possible Commission exception to that previous decision. After brief discussion, Mr. Ketterer moved, Mr. Ott seconded, and Members voted 2-1 (Chair Harding opposed) to treat Ms. Diesinger's the same as the other replacement candidates who replace themselves and to deny her request for an exception based upon her name change. Chair Harding stated that he would interpret the replacement provisions more broadly and would grant eligibility in these cases.

Agenda Item #8: John F. Piotti Request to Remove Expense

Mr. Piotti ordered campaign literature (palm cards) with personal quotations that he learned after receiving the cards were not acceptable to the source of one of the quotes. As a MCEA candidate, he requested the Commission to authorize him to dispose of the cards and reimburse his MCEA account from his personal funds and reorder acceptable cards. His letter dated August 1, 2002 more fully explains the factual situation and his proposed resolution. After brief discussion, Chair Harding moved, Mr. Ketterer seconded, and Members voted unanimously that, as a campaign-related expenditure, the cost of printing the cards should be paid from Mr. Piotti's Maine Clean Election funds and not from his personal funds. The fact that Mr. Piotti determined that the cards are unusable is a campaign decision that should not be subsidized by personal funds.

Agenda Item #11: Repeal of 21A M.R.S.A. §1020-A(4) and (5) (8/1/02)

The Commission's penalty assessment authority contained in §1020-A(4)(Basis for penalties) and (5)(Maximum penalties) was repealed effective August 1st, 2002, by enactment of Public Law 2001, Chapter 470 (L.D. 1809). Counsel Gardiner advised that the Legal and Veterans' Affairs Committee's Staff Analyst is conferring with the Speaker's and Senate President's offices to determine what (if any) course of action they may want to take to rectify that apparently unintended action. Following brief discussion, Members directed Mr. Hain to draft a letter to the legislative leadership for signature at the next meeting informing the Legislature of the problem and encouraging action to remedy the situation.

Members set Wednesday, September 18th, 2002, at 10:00 a.m. as the next scheduled Commission meeting.



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There being no further business, on motion and unanimous vote, the Commission adjourned at 12:20 p.m.

Respectfully submitted,

William C. Hain, III
Director